

**CALIFORNIA COUNCIL FOR ENVIRONMENTAL  
AND ECONOMIC BALANCE  
100 Spear Street, Suite 805, San Francisco, CA 94105**

**VIA ELECTRONIC MAIL**

November 26, 2004

Dr. John Faust  
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**Re: Cal/EPA EJ Action Plan Implementation: CCEEB's Preliminary  
Comments regarding the Definition of "Multi-media Cumulative  
Impacts"**

Dear Dr. Faust:

The California Council for Environmental and Economic Balance ("CCEEB") is a coalition of business, labor and public leaders that strives to advance collaborative strategies that protect public health and the environment while allowing California's economy to grow. Following are CCEEB's comments regarding the definition of "Multi-media Cumulative Impacts" under Cal/EPA's Environmental Justice Action Plan (the "EJ Action Plan"). We have organized the comments into the following four areas.

- 1) an introductory comment;
- 2) the suggested definition;
- 3) related comments; and
- 4) closing comments.

**I. INTRODUCTORY COMMENT**

**Comment 1: Environmental justice programs should clearly define terms.**

CCEEB supports Cal/EPA's effort to define "multi-media cumulative impacts" under the EJ Action Plan. CCEEB believes that environmental justice programs should clearly define terms. Clear terms allow Cal/EPA and stakeholders from various sectors of the public (including communities and businesses) to have to the same understanding of Agency policies.

## II. SUGGESTED DEFINITION

**Comment 2: CCEEB suggests that Cal/EPA define “multi-media cumulative impacts” as “the adverse health risk posed by exposure to pollutants from multiple pollution sources.”**

CCEEB suggests that Cal/EPA define “multi-media cumulative impacts” as follows.

“Multi-media cumulative impacts” means the adverse health risk posed by exposure to pollutants from multiple pollution sources.

This suggested definition is appropriate for the following reasons.

- A) It captures the multi-media aspect by referring to “pollution sources” as opposed to, for example, just air pollution sources or just waste discharge sources.
- B) It captures the cumulative aspect (i.e., sources evaluated in the aggregate) by referring to “multiple” pollution source.
- C) Consistent with OEHHA’s guidance on health risk assessment, it includes (in the term “health risk”) both cancer and noncancer (acute and chronic) risk.
- D) It allows consideration of the paths of exposure (air, water, food and soil) and the toxicity of the pollutants involved. (A definition that just added emissions and discharges would not be adequate because, as OEHHA is well aware, the toxicity of a chemical varies between chemicals and health risk varies with factors such as exposure, distance to receptor, etc.)
- E) Cal/EPA’s application of this definition would allow objective, as opposed to subjective, evaluation of what are the cumulative impacts in a community. This is critical to the development of fair and equitable programs to address cumulative impacts.
- F) It is consistent with Cal/EPA’s commitment to conduct cumulative impacts efforts with a “strong scientific foundation.”
- G) It will allow Cal/EPA and the BDOs to prioritize their work and focus on the health risks that pose the greatest harm.

### III. RELATED COMMENTS

**Comment 3: The suggested definition would cover the scope of “multi-media cumulative impacts,” but there are important policy issues that would still need to be addressed.**

CCEEB’s suggested definition of “multi-media cumulative impacts” would cover the “**scope**” of multi-media cumulative impacts (i.e., what is included in that term). It would not address the issue of how the Agency would decide if there is a cumulative impacts problem. For example, we expect that any community in the South Coast Air Basin might have “multi-media cumulative impacts” under the suggested definition just based on the cancer risk due to mobile sources. But how should Cal/EPA and the BDOs determine if the level of cumulative health risk in a community is disparate (e.g., that it is unusually higher than the cumulative health risk for the region)? There are many such related issues that Cal/EPA will need to think through and resolve with input from stakeholders. This particular comment set is limited to what should and what should not be included in the meaning of the term.

**Comment 4: The definition of “multi-media cumulative impacts should *not* include social factors (e.g., lack of health insurance, emotional stress, dilapidated housing, crime, vermin, nutrition, etc.).**

Some groups have suggested that the definition of “multi-media cumulative impacts” should include social factors such as those included in a draft report by a working group to the National Environmental Justice Advisory Council. That draft report’s list suggests more than 45 varied factors including lack of health insurance, emotional stress, dilapidated housing, crime, vermin, nutrition, etc. CCEEB recognizes that many people in many communities in California try to cope with major problems every day such as lack of health insurance, crime in the neighborhood and emotional stress. However, environmental justice policies and related regulatory programs cannot be expected, and nor should they be required, to resolve broader issues of social injustice. Including these factors in the scope of “multi-media cumulative impacts” would suggest that Cal/EPA could somehow resolve those types of social issues. While these are issues that may present serious concerns for a community, they are issues that are beyond Cal/EPA’s jurisdiction and are beyond Cal/EPA’s capacity to resolve.

Some would suggest that these factors should be included in the definition because members of the public who are subject to such factors are more vulnerable to environmental exposures. CCEEB suggests that Cal/EPA should **not** include the social factors in the definition for the following additional reasons.

- A. OEHHA's guidance already takes into account populations with high vulnerability.
- B. CCEEB is not aware of peer-reviewed data and methodologies to support inclusion of these social factors in a definition of "multi-media cumulative impacts."
- C. Analyses of multi-media cumulative health impacts need to be objective and science-based – not based on speculation. Allowing consideration of an undefined host of factors that cannot be quantified would lead to arbitrary decisions – not effective uses of limited resources that are critical for improved public health.
- D. Where the Legislature has decided that inclusion of a specific new element in an environmental analysis is appropriate and should be required, the Legislature has specifically authorized or required the analysis of a factor (e.g., susceptibility of infants and children to air pollutants).

On a related note, U.S. EPA has looked at considering lifestyle choices such as smoking, alcohol consumption, and the abuse of drugs. Certainly there are public health issues that are associated with lifestyle choices, but they should not be part of a cumulative impacts analysis that could lead to further environmental regulation for business (further regulation which would **not** address the health issues raised by those lifestyle choices).

Cal/EPA has taken on a huge technical and policy challenge by moving into the area of cumulative impacts. By exploring the cumulative impacts on a multi-media basis, Cal/EPA is adding another vast dimension to the already challenging area of analyzing cumulative impacts for an individual environmental medium. Cal/EPA's work on analyzing and addressing pollution on a cumulative and multi-media basis should focus on what pollution people are being exposed to from multiple sources, and what health risk does that exposure pose.

**Comment 5: The Advisory Committee's Suggested Default Definition of "Cumulative Impacts" is Subject to Multiple Interpretations and is Problematic**

As Cal/EPA's Advisory Committee on Environmental Justice developed its recommendations to Cal/EPA, one recommendation that was in multiple drafts for a very long time and that was in the last (July 2003) public draft was a draft recommendation that Cal/EPA establish a common definition of "cumulative impacts." CCEEB supported inclusion of that draft recommendation. On the last day that the Committee met and voted on the recommendations report (September 30, 2003), the Committee had a

relatively quick discussion regarding the recommendation on the definition of “cumulative impacts.” (Secretary Winston Hickox was present at the meeting and wanted to witness the final vote on the report but needed to leave before the meeting had been scheduled to end.) The Committee discussed suggesting a definition based on the total of all emissions and discharges. Committee member Cindy Tuck (CCEEB’s General Counsel) noted that just adding emissions and discharges would leave out the key information such as what is the public’s exposure, what is the toxicity of the chemicals involved and what is the health risk. After some discussion, the Committee voted to recommend that Cal/EPA establish a common definition of “cumulative impacts” in a public process within six months and that in the interim the interim definition should be “the total burden of all emissions and discharges in a geographical area.”

CCEEB did not support the definition developed at that meeting. As quoted below from the Alternative Opinion to the Committee’s Report (at Page 44 of the Committee’s report), CCEEB explained concerns about the suggested default definition.

CCEEB is reviewing this brand new version of this recommendation. One initial comment is that in evaluating cumulative impacts for an individual environmental media, such as air quality, it is important to inventory all of the emissions (or discharges), but evaluating emissions (or discharges) alone will not allow a regulator to determine whether or not there is a problem or what the magnitude of the problem is. For example, an area that is in attainment of the State ozone standard will have “total NOx and VOC emissions,” but further regulatory action for ozone beyond maintenance efforts would be unnecessary for that area. The key question in that example is what is the concentration of ozone in the air (i.e., what level of ozone are people being exposed to and does that level exceed a health-based standard?). As another example, an area will have “total emissions” of toxic pollutants, but that number of emissions will not tell the agency if there is a problem or not. The regulator needs to look at which chemicals are involved, what the exposure is, what is the risk posed by the exposure (i.e., factors such as toxicity and distance to the nearest off-site receptor must be considered), and whether the risk exceeds acceptable limits or risk. As an Office of Environmental Health Hazard Assessment representative noted in a discussion at the August 26, 2003 meeting of the Air Resources Board’s (“ARB’s”) Environmental Justice Stakeholders Group regarding how ARB should define “cumulative air pollution impacts,” “emissions do not tell you what you need to know.” He indicated that toxicity is key, and you cannot ignore risk assessment.

Developing an appropriate definition of “cumulative impacts” will be a key part of Cal/EPA’s and the BDOs’ work on environmental justice. A valid definition that takes into account exposures and health risk will be key to: 1) making sure that decisions are reasonable regarding what constitutes the level of cumulative impacts that should be regulated beyond existing program requirements; and 2) making sure that measures to address unusually high levels of cumulative impacts are not arbitrary.

In looking at the Committee’s suggested definition at this time, we still have those same concerns, and we note further that the Committee’s definition is subject to multiple interpretations. As noted in Comment 1 above, it is important that Cal/EPA’s definition be clear so that stakeholders interpret it the same way.

The key is that Cal/EPA is moving forward with the public process to define “multi-media cumulative impacts.”

### **III. CLOSING COMMENTS**

#### **Comment 6: The definition of “multi-media cumulative impacts” could affect key programs in the future.**

Cal/EPA is currently working to define “multi-media cumulative impacts” and the next related step under the EJ Action Plan is the Phase 2 step of inventorying current science-based cumulative impact studies, protocols and tools and determining where the gaps existing in current methodologies. Both of these steps, and the step of filling gaps in science-based protocols and tools, are critical to having Cal/EPA’s and the BDOs’ work on multi-media cumulative impacts be effective, fair and equitable. In the Advisory Committee’s process in 2002 and 2003, some participants were suggesting that no new permits should be issued in areas with high cumulative impacts. Others were suggesting the buffer zones should be applied in such areas. Cal/EPA’s process to evaluate what are appropriate measures will occur a bit down the road, but given the types of measures that some groups have suggested, it makes it all the more important to have an objective meaning of the term “multi-media cumulative impacts” and well-thought out policies for evaluating whether an area has disparate health risk due to exposure to environmental pollution.

CCEEB appreciates OEHHA’s and Cal/EPA’s consideration of these comments. CCEEB recognizes that this is a challenging new area of work. We look forward to continued discussions with Cal/EPA, OEHHA and the stakeholders.

If you have any questions, or if you would like to discuss the comments, please contact me at (415) 512-7890 or Cindy Tuck at (916) 442-4249.

Sincerely,

VICTOR WEISSER  
President

Via Electronic Mail

cc: The Honorable Terry Tamminen  
The Honorable James Branham  
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